

ONTARIO MINISTRY OF LABOUR	
FEB 16 1978	
HUMAN RIGHTS COMMISSION	
FILE CODE	

THE ONTARIO HUMAN RIGHTS CODE,
R.S.O. 1970, c. 318, as amended

IN THE MATTER OF: The complaint, as amended, made by Mr. Leslie Nawagesic of Gull Bay, Ontario, alleging discrimination in failure to rent an apartment by Mr. and Mrs. U.O. Rauman, 137 Banning Street, Thunder Bay "P", Ontario.

APPEARANCES: Mr. Thomas Lederer, Ministry of the Attorney General - Counsel for the Ontario Human Rights Commission and Mr. Leslie Nawagesic.
Mr. Juha Siimes, Esq. - Counsel for Mr. and Mrs. R. Rauman.

A HEARING BEFORE: Peter A. Cumming, appointed a Board of Inquiry in the above matter by the Minister of Labour, The Honourable Bette Stephenson, by form of appointment dated July 14, 1977 to hear and decide the complaint.

DECISION AND ORDER

Introduction

This Board of Inquiry was constituted with respect to a complaint made by Leslie Nawagesic, a native person, of North American Indian ancestry, alleging discrimination in failure to rent an apartment, and specifically, contravention of subsection 3 (1) of the Ontario Human Rights Code which reads:

3.-(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,

- (a) deny to any person or class of persons occupancy of any commercial unit or any housing accommodation; or
- (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any housing accommodation,

because of race, creed, colour, sex, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons.

DECISION AND ORDER

Preliminary Issue

My "APPOINTMENT" by the Minister of Labour was filed as Exhibit 1. The Notice of Hearing, with annexed Complaint, was filed as Exhibit 2. Mrs. R. Rauman was the one person named in the complaint as alleged to have contravened The Ontario Human Rights Code, R.S.O. 1970, c. 318, as amended (hereinafter referred to as the "Code"). Mr. Lederer moved to amend the complaint by way of adding Mr. R. Rauman, spouse of Mrs. Rauman, as an additional person named in the complaint as alleged to have contravened the Code.

Section 14b. (1)(e) of the Code reads:

The parties to a proceeding before a board of inquiry with respect to any complaint are,

- (a) the Commission, which shall have the carriage of the complaint;
- (b) the person named in the complaint as the complainant;
- (c) any person named in the complaint and alleged to have been dealt with contrary to the provisions of this Act;
- (e) any other person specified by the board upon such notice as the board may determine and after such person has been given an opportunity to be heard against his joinder as a party.

Mr. and Mrs. Rauman held title as joint tenants of the property in question in the hearing, 137 Banning Street, Thunder Bay. Although Mr. Rauman, and Mr. Siimes, had only learned on the day of the hearing that a motion was to be made to add Mr. Rauman as a party, Mr. Lederer argued that there was no actual prejudice as Mr. Rauman had been aware

of all the facts throughout the investigation of the Commission. Mr. Siimes argued that it would be a denial of natural justice to add Mr. Rauman on the day of the hearing.

Section 14 b. (1)(e) gives the Board of Inquiry the power to add any person as a party to the proceedings, upon such notice as the Board may determine and after such person has been given an opportunity to be heard against his joinder as a party.

Generally, the preferred course of action when the Commission wishes to add a new party to a proceeding would be to give as much notice to the person affected as possible of the intended application before the Board of Inquiry, or even seek to apply to the Board for the person to be added as a party, well in advance of the actual hearing.

In the instant situation, I agreed to adding Mr. U.O. Rauman as a person named in the complaint as alleged to have contravened the Code, on the basis that there was no actual prejudice by the delay in his becoming a party to the proceeding, as he was fully familiar with the matter from the time of the making of the complaint in the spring of 1976. I allowed him to speak against his joinder as a party, and at that point Mr. Siimes stated he had authority to represent Mr. Rauman in respect to the matter. I offered Mr. Siimes, as counsel at that point for Mr. Rauman, an adjournment of the hearing but it was declined. In my view the overall public policy of the Code is furthered by a Board of Inquiry having a broad discretion to add parties to a proceeding before it, and this broad power is given by s. 14 b. (1)(e) of the Code. Accordingly, I allowed the Complaint to be amended and I specified Mr.



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U.O. Rauman to be a party to the proceeding before the Board of Inquiry,
and the hearing proceeded.

The Evidence as to the Factual Situation Related to the Complaint

Leslie John Nawagesic, now 31, the complainant, presently of Gull Bay, Ontario, and a skidder operator for a pulp and paper contractor with the Gull Bay Development Corporation, is a Canadian Indian.

On April 21, 1976, he was employed in Thunder Bay to work as a Court worker for the Provincial Court, in a programme under the auspices of the Indian Friendship Center. Mr. Nawagesic had lived in Thunder Bay for the previous approximate eight years, in five or six rooming house. He was anxious to move from the apartment he was then renting on Powley Street, being dissatisfied with the premises, and also unwilling to pay a higher rent which his landlord had indicated would be asked. Accordingly, he had given notice to terminate the tenancy to his landlord, and was watching the newspapers for advertised apartments. During the week of April 19, 1976, he went to view five apartments from Tuesday to Friday. He responded to an ad in The Chronicle-Journal, Wednesday, April 21, 1976 (Exhibit "6"), which read:

"BACHELOR APARTMENT,
three room furnished suite,
private entrance and bath.
Apply 137 Banning St. A.22"

and went to the premises. Mr. Rauman showed him the apartment, and Mr. Nawagesic was told the rent was \$150. per month. However, as the apartment was furnished and Mr. Nawagesic had his own furniture, Mr. Nawagesic was uncertain as to whether he wanted the apartment and left.

He returned at some point "from half an hour to an hour and a half" later, and spoke with both Mr. and Mrs. Rauman.

Q. Now what can you tell the Board of the conversation you had with Mr. and Mrs. Rauman on this second occasion?

A. Well, I had made up my mind that I would take the apartment, and so I told Mr. Rauman that if the apartment is still available I'd like to take it. And he told me that he would like to wait till Friday till other people have seen the apartment. And I told him I don't understand why he wants to wait till Friday, you know. I was willing to move in now, ready and knowing that the apartment was available, I could move in today. And then he brought the point up, "Well you have furniture", and I told him not to worry about it, that I will take the apartment as it is, and he continued that he would still like to see other people inspect it before he makes a decision. And then this is where I started to get a little confused, and I said, "Are you discriminating against me?," and this is when Mrs. Rauman seemed to appear, and she says, "No" when she entered the conversation, and she...they said, "No, we are not discriminating against you, only we want to see that other people see the apartment till Friday". (Evidence, p. 59)

Mr. Nawagesic testified that he was "fed up" with Thunder Bay due to his being unable to find an apartment and that he "gave up", quitting his job, and leaving Thunder Bay the following Sunday. Some time later he filed a complaint with the Ontario Human Rights Commission.

Uuno Olavic Rauman gave evidence through an interpreter. He has an understanding of basic English. Mr. Rauman, born in Finland, has lived in Canada 24 years and lived at 137 Banning St. some 18 years, and during all that time has rented rooms to tenants. He works in the bush for the pulp and paper industry. He testified that the apartment advertised

had previously been rented for \$140. a month by a man who had a dog and that this occupancy had been very unsatisfactory. The apartment had been vacant for about a week when the advertisement of April 21 was made.

Mr. Rauman testified as to his procedure over the 18 years in selecting tenants:

A: It was that we didn't take the name, but we asked each and everyone where they worked, and also we told that we would like to not select the first one to take it.

Q. Did you follow this procedure in the case of Mr. Nawagesic?

A. Yes, we did.

Q. Can you perhaps relate to the Board, what, if anything, happened when Mr. Nawagesic came to your door?

A. First when he came to the front door, I took him to the back, and I asked him where he worked, and he told me at the Court House, and at the same time I saw an ironic smile on his face so I suspected how truthful he was, and I didn't take him. I said I'd like to see some more people.

Q. Was Mr. Nawagesic the first person that you talked to?

A. Yes, he was.

Q. What price did you quote Mr. Nawagesic?

A. \$150.

Q. How did you pick the price of \$150?

A. We thought it would be fair to raise the previous rent.

Q. Did you have occasion to change your mind later?

A. Yes, we discussed afterwards and we felt that maybe the rent is a little too high since we have always had low rents.

Q. When you say "we", who are you referring to?

A. I only meant with my wife.

Q. How many people came to look at this suite in April of 1976?

A. I can't remember exactly, but I think four or five.

Q. Who did you eventually rent the premises to?

A. One man came to see after Mr. Nawagesic, and I also asked him where he worked, and his answer was at the Provincial Paper Mill. And I liked him since he had a steady job and so we took him. (Evidence pp. 79,80)

Under cross-examination by Mr. Lederer, Mr. Rauman said:

Q. Now when Mr. Nawagesic came to the door, did you ask him for any references?

A. I asked him where he worked.

Q. But did you ask him whether...

A. And when he answered he said, "At the Court House" and had that ironic smile. After that I didn't ask anything. Since I was suspicious about him that he wasn't right.

Q. Is there any reason, other than the smile that you have referred to, that you have for not believing Mr. Nawagesic?

A. No, since it has been our habit to see everyone as equal, so I didn't think his case was any different.

Q. I don't know if that's responsive to my question. You indicated that you asked Mr. Nawagesic where he worked?

A. Yes.

Q. And he told you that he worked at the Court House?

A. Yes.

Q. And he smiled?

A. It was not a usual smile.

Q. Well, you say it was a, if you like, a sardonic kind of smile?

BY THE CHAIRMAN:

Ironical?

BY THE WITNESS:

Yes.

BY MR. LEDERER:

Q. Now you indicate that because of that smile you didn't believe him?

A. And the Court House. Since he didn't give any other explanations, that's why I was suspicious.

Q. I am sorry, could you repeat that again.

A. The Court House, and he didn't give any other explanation, I got suspicious.

Q. Did you ask him for any other explanation?

A. I didn't .

Q. Since you were suspicious because he didn't give any further explanations, didn't you think it would have been reasonable for you to ask for that further explanation?

A. That special smile did have an effect that I didn't... that I thought I'd look for someone else. (Evidence, pp. 85 to 87)

Mr. Rauman said that his tenants over the years had included people of various backgrounds, including Portuguese, Japanese, Mexican and Francophonic, and that his adult daughter had a native Canadian as her boyfriend for about four years who had visited the house many times. Most of these tenants were single, young men of a similar walk of life to Mr. Nawagesic.

Mr. J.A.K. McCuaig, the Human Rights Officer in Thunder Bay for the Ontario Human Rights Commission, testified. Upon receiving Mr. Nawagesic's complaint, he determined that an advertisement was placed in the newspaper (Exhibit #6).

Mr. McCuaig spoke with the Rauman's July 16, 1976. He testified:

Q. Now did either one or both of them recall the incident?

A. I read the complaint, and they advised me that the complaint was factually correct. However, they disagreed with the conclusion. They recalled that Mr. Nawagesic had come to the apartment, and I believe that Mrs. Rauman was the person who stated that Mr. Nawagesic was rather nicely dressed and had a nice truck. They also recalled that he was accompanied by another man. And they went on to explain to me that they did not want to rent the apartment to the first person who came, and they indicated that Mr. Nawagesic was the first person to apply for the apartment. They stated that they wanted to be able to judge the tenants or the applicants, and they also indicated that they felt that the people who were looking for apartments quite often wanted also to have an opportunity to look, too. We did enter into some discussion as to whether or not they took the names of the people when they said for them to come back later on, and they indicated to me that they did not take the names, and in this case they did not take Mr. Nawagesic's name. (Evidence, p. 40)

George Blanchette, 23, a labourer, of French and English ancestry, also gave evidence. He attended at 137 Banning St. about 4:00 p.m. April 21, 1976 and rented the apartment. It was not suggested by the Raumans that he should wait while other people viewed the apartment. However, he was asked as to whether he smoked or consumed alcholic beverages.

Richard Bostrom, 30, a labourer of Swedish and Finnish ancestral background, also testified. He said he learned from his brother in October 1976, who in turn had been told by his friend, George Blanchette, that an apartment was available at 137 Banning St. Accordingly, he viewed an apartment at that address and rented it. There was no suggestion by the Raumans that they would prefer to wait and have the apartment seen by others before committing themselves.

Mr. Rauman, in his testimony, said that he accepted Mr. Bostrom as a tenant so readily because Bostrom was known to another tenant, George Blanchette, and that he had accepted George Blanchette because he worked for the paper mill.

Summary of Evidence and Findings of Fact

There are several matters that brought into question Mr. Rauman's testimony and his credibility. First, it is clear that he said to Mr. Nawagesic that the rent for the apartment would be \$150. per month, and even though Mr. Nawagesic was prepared to pay \$150, Mr. Rauman told him to wait and then rented the apartment to Mr. Blanchette for \$140. per month, and without even bargaining with Mr. Blanchette. His statement on this point was that he thought they, the Raumans, were asking too much. But why would he rent the apartment to Blanchette for \$140. per month when he had an offer of \$150. per month from Mr. Nawagesic?

Second, Mr. Rauman was, at least at first appearance, inconsistent in the procedures which he applied. Although he said he would not rent to the first person who came, in fact he did so in the case of both Mr. Bostrom and Mr. Blanchette. However, in Blanchette's case Mr. Rauman was dealing with someone who worked in the pulp and paper industry and this was important to Mr. Rauman. He was very concerned that a tenant have a steady job. The effect of the evidence of Blanchette and Bostrom was to corroborate this. Bostrom was known to Blanchette, and therefore Mr. Rauman had some reason to think Bostrom would be a satisfactory tenant.

Third, Mr. Rauman's evidence was often inconsistent. Perhaps this was in part due to the natural weakness of memory, compounded with his difficulties of language. While Mr. Rauman criticized Mr. Nawagesic at the hearing for his inability to remember specific details, Mr. Rauman could not remember as much, and was confused and contradictory in relating the facts and course of events. Perhaps his confusion was in part due to his problem with the English language, although in my view his understanding of English in fact is rather good.

Mr. Nawagesic was a more impressive witness than Mr. Rauman. He was straightforward, and although very reticent in manner and speech, I accept his testimony as to the facts in preference to Mr. Rauman's

evidence, where there is any contradiction.

However, the critical issue is the inference one can make from the facts. Mr. Nawagesic inferred that Mr. Rauman was discriminating toward him. Mr. Rauman, on the other hand, maintained that he was not in fact discriminating against him, but rather that he just did not believe Mr. Nawagesic in fact had a job with the Provincial Court and that was the reason for his disinterest in renting the apartment to Mr. Nawagesic.

The totality of Mr. Rauman's evidence indicates that he is very concerned as to who will be his tenants. The issue is as to whether Mr. Rauman's concern is founded on discrimination? My conclusion is that his concern was to have tenants who were responsible in personal demeanour and in payments for rent. Mr. Rauman was skeptical as to Mr. Nawagesic's employment. He was very wrong, and very unfair in this skepticism. Moreover, he did nothing at all to elucidate upon the matter. He did not ask Mr. Nawagesic for references, nor did he even indicate the basis of his concern. A reasonable person could have made the inference of discrimination that Mr. Nawagesic then did. It would have helped, if Mr. Nawagesic had taken the initiative in pressing Mr. Rauman as to his concerns and why Mr. Rauman was telling him to wait. Mr. Nawagesic did not press Mr. Rauman. This is understandable perhaps, given the treatment Mr. Nawagesic felt he was receiving from landlords generally in his search for an apartment to rent. I am not, of course, faulting Mr. Nawagesic in this regard. I am saying that he is an individual who is very reserved in his speech and manner, and that his failure to press Mr. Rauman for an explanation compounded the problem.

Mr. Rauman is an elderly landlord who is a suspicious, skeptical individual, and is very cautious as to his tenants. He is also reserved in speech. Moreover, he does not speak English well.

In my opinion, this is a situation in which there was a failure of meaningful communication as between the two principals, Mr. Rauman, and Mr. Nawagesic. Mr. Rauman was far too quick to jump to conclusions, and was not frank with Mr. Nawagesic as to his concerns and inferences, and Mr. Nawagesic's taciturn demeanour compounded Mr. Rauman's misconceptions. Had either been different in their personality, there would have been much further communication and understanding. If this had taken place, I am prepared to accept Mr. Rauman's testimony that he would have rented the apartment to Mr. Nawagesic. His manner toward Mr. Nawagesic was unacceptable, even reprehensible. But in my view, given the totality of the evidence, I do not think Mr. Rauman's manner of dealing with Mr. Nawagesic was an act of discrimination.

I am left with mere suspicions as to Mr. Rauman's motives in dealing with Mr. Nawagesic. I can only speculate as to whether one of his motives in dealing with Mr. Nawagesic was possibly due to a view of native people from the standpoint of an unfavourable and unfair stereotype. I am left with a suspicion that Mr. Rauman may have thought someone of Indian ancestry could not qualify to work at the Provincial Court. If such was Mr. Rauman's view of native peoples and a cause of his rejection of Mr. Nawagesic as a tenant (and I am not making that finding on the evidence) it would have been incorrect and unfair to Mr. Nawagesic and to native people generally, and would have constituted an act of discrimination and been a contravention of s. 3(1)(a) The Ontario Human Rights Code.

I have set forth at length a review of the relevant law in a decision with respect to another Broad of Inquiry and accordingly I shall not restate the law here.¹ As I have said, I am left with a mere suspicion

1. In the matter of Nawagesic v. Crupi, February 6, 1978.

and I am prepared to give Mr. Rauman the benefit of the doubt on the balance of probabilities. Other Boards of Inquiry have articulated correctly the approach that should be taken.

In applying anti-discrimination legislation it is always a difficult task to ascertain the real reasons motivating individuals to deny access to accommodation. Such access can be denied if it is thought that the applicant is disreputable, or unreliable, or unkempt, or very untidy, or some other undesirable characteristic which can apply equally regardless of a person's race or colour.¹...

. . .Although I am suspicious of Mr. Kyryliuk's denials, more than suspicion is required, and I am unable to conclude that the allegation of discrimination has been established by evidence of that degree of cogency appropriate for an allegation as serious as that made against Mr. Kyryliuk.²...

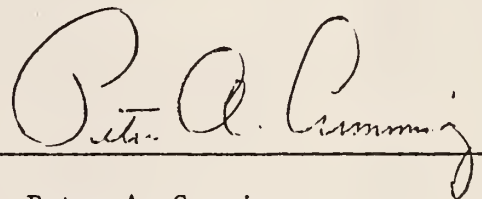
Complaints of this nature, which turns upon conclusions as to the motives of those accused of discriminatory conduct are difficult to prove to a high degree of certainty. The instant proceeding is not a criminal prosecution, however, and it would be inappropriate to demand of a complainant or of the Ontario Human Rights Commission proceeding on his behalf, that the complaint be proved "beyond a reasonable doubt". On the other hand, the respondent has been charged with misconduct to which quite rightly attaches the condemnation of the public. More importantly, if the Human Rights Commission were to find (on the basis of this report) that such misconduct in fact occurred, either civil or quasi-criminal sanctions may be imposed. Thus, it is extremely important that findings of guilt should not lightly be made by me.³...

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1. In the matter of Mitchell v. O'Brian, April 5, 1968, Ontario Human Rights Commission. Board of Inquiry Reports. Pages 1-2: Board of Inquiry Walter Tarnopolsky, July, 1971.
 2. In the matter of Tompkins v. Kyryliuk, July, 1971 at page 9; Horace Krever, Board of Inquiry.
 3. In the matter of Henry, Henry, and Black, v. Rajewski, March 4, 1969 At Page 1: Harry Arthurs, Board of Inquiry.

The position of Mrs. Rauman is, of course, very much stronger than that of Mr. Rauman given the evidence and I have no doubt, on the evidence, in finding that she did not contravene The Ontario Human Rights Code.

I should like to emphasize that my conclusions as to the evidence are based upon the testimony of the parties before me with the benefit of searching cross-examination, and I am able to base my conclusions after observing Mr. Rauman give his testimony under close and rigorous scrutiny. This is a situation where the Complainant could, and did, make a reasonable inference as to discrimination given the circumstances, the investigation by the Commission was as thorough and rigorous as possible, and in respect to which a Board of Inquiry should have been, and was in fact constituted. Mr. Rauman, due to the manner of his dealing with Mr. Nawagesic, bears the major part of the responsibility for the necessity of a Board of Inquiry.

Dated at Toronto this 14th day of February, 1978.

A handwritten signature in cursive script, reading "Peter A. Cumming", written over a horizontal line.

Peter A. Cumming
Board of Inquiry

